

SB 11

FILED

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE  
Regular Session, 2006

**ENROLLED**

*Committee Substitute for*

SENATE BILL NO. 11

(By Senators Yoder and Barnes )

PASSED March 11, 2006

In Effect July 1, 2006 Passage

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C. WIDE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 11

(Senators Yoder and Barnes, *original sponsors*)

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[Passed March 11, 2006; to take effect July 1, 2006.]

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AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-3-18, all relating generally to the appointment of judges and magistrates to fill vacancies; providing for an additional circuit court judge to be appointed to the twenty-third judicial circuit; and providing for the expeditious filling of judicial vacancies by limiting the time during which a challenge to an appointment may be instituted.

*Be it enacted by the Legislature of West Virginia:*

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-3-18, all to read as follows:

**ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**

**§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.**

1 (a) The state shall be divided into the following judicial  
2 circuits with the following number of judges:

3 The counties of Brooke, Hancock and Ohio shall consti-  
4 tute the first circuit and shall have four judges; the  
5 counties of Marshall, Tyler and Wetzel shall constitute the  
6 second circuit and shall have two judges; the counties of  
7 Doddridge, Pleasants and Ritchie shall constitute the third  
8 circuit and shall have one judge; the counties of Wood and  
9 Wirt shall constitute the fourth circuit and shall have three  
10 judges; the counties of Calhoun, Jackson, Mason and  
11 Roane shall constitute the fifth circuit and shall have two  
12 judges; the county of Cabell shall constitute the sixth  
13 circuit and shall have four judges; the county of Logan  
14 shall constitute the seventh circuit and shall have two  
15 judges; the county of McDowell shall constitute the eighth  
16 circuit and shall have two judges; the county of Mercer  
17 shall constitute the ninth circuit and shall have two  
18 judges; the county of Raleigh shall constitute the tenth  
19 circuit and shall have three judges; the counties of  
20 Greenbrier and Pocahontas shall constitute the eleventh  
21 circuit and shall have two judges; the county of Fayette  
22 shall constitute the twelfth circuit and shall have two  
23 judges; the county of Kanawha shall constitute the thir-  
24 teenth circuit and shall have seven judges; the counties of  
25 Braxton, Clay, Gilmer and Webster shall constitute the  
26 fourteenth circuit and shall have two judges; the county of  
27 Harrison shall constitute the fifteenth circuit and shall  
28 have three judges; the county of Marion shall constitute  
29 the sixteenth circuit and shall have two judges; the county  
30 of Monongalia shall constitute the seventeenth circuit and  
31 shall have two judges; the county of Preston shall consti-  
32 tute the eighteenth circuit and shall have one judge; the  
33 counties of Barbour and Taylor shall constitute the  
34 nineteenth circuit and shall have one judge; the county of  
35 Randolph shall constitute the twentieth circuit and shall

36 have one judge; the counties of Grant, Mineral and Tucker  
37 shall constitute the twenty-first circuit and shall have two  
38 judges; the counties of Hampshire, Hardy and Pendleton  
39 shall constitute the twenty-second circuit and shall have  
40 one judge; the counties of Berkeley, Jefferson and Morgan  
41 shall constitute the twenty-third circuit and shall have  
42 four judges: *Provided*, That effective the first day of  
43 August, two thousand six, said circuit shall have five  
44 judges; the county of Wayne shall constitute the twenty-  
45 fourth circuit and shall have one judge; the counties of  
46 Lincoln and Boone shall constitute the twenty-fifth circuit  
47 and shall have two judges; the counties of Lewis and  
48 Upshur shall constitute the twenty-sixth circuit and shall  
49 have one judge; the county of Wyoming shall constitute the  
50 twenty-seventh circuit and shall have one judge; the  
51 county of Nicholas shall constitute the twenty-eighth  
52 circuit and shall have one judge; the county of Putnam  
53 shall constitute the twenty-ninth circuit and shall have  
54 two judges; the county of Mingo shall constitute the  
55 thirtieth circuit and shall have one judge; and the counties  
56 of Monroe and Summers shall constitute the thirty-first  
57 circuit and shall have one judge: *Provided*, That the  
58 Kanawha County circuit court shall be a court of concur-  
59 rent jurisdiction with each single judge circuit where the  
60 sitting judge in such single judge circuit is unavailable by  
61 reason of sickness, vacation or other reason.

62 (b) Any judge in office on the effective date of the  
63 reenactment of this section shall continue as a judge of the  
64 circuit as constituted under prior enactments of this  
65 section, unless sooner removed or retired as provided by  
66 law, until the thirty-first day of December, two thousand.

67 (c) The term of office of all circuit court judges shall be  
68 for eight years. The term of office for all circuit court  
69 judges elected during the general election conducted in the  
70 year two thousand shall commence on the first day of  
71 January, two thousand one, and end on the thirty-first day  
72 of December, two thousand eight.

73 (d) Beginning with the primary and general elections to  
74 be conducted in the year one thousand nine hundred  
75 ninety-two, in all judicial circuits having two or more  
76 judges there shall be, for election purposes, numbered  
77 divisions corresponding to the number of circuit judges in  
78 each circuit. Each judge shall be elected at large from the  
79 entire circuit. In each numbered division of a judicial  
80 circuit, the candidates for nomination or election shall be  
81 voted upon and the votes cast for the candidates in each  
82 division shall be tallied separately from the votes cast for  
83 candidates in other numbered divisions within the circuit.  
84 The candidate receiving the highest number of the votes  
85 cast within a numbered division shall be nominated or  
86 elected, as the case may be: *Provided*, That beginning with  
87 the primary and general elections to be conducted in the  
88 year two thousand, judges serving a judicial circuit  
89 comprised of four or more counties with two or more  
90 judges shall not be residents of the same county.

91 (e) The Supreme Court of Appeals shall, by rule, estab-  
92 lish the terms of court of circuit judges.

**ARTICLE 3. COURTS IN GENERAL.**

**§51-3-18. Expeditious filling of judicial vacancies.**

1 (a) The Legislature finds that when judicial offices  
2 created under the constitution and laws of the state are  
3 vacant for extended periods of time, the proper function-  
4 ing of the judicial branch of the government is impeded.  
5 The Legislature further finds that when a vacancy in a  
6 judicial office is to be filled by appointment, it is in the  
7 public interest that any questions regarding the qualifica-  
8 tions or eligibility of the person nominated or appointed to  
9 fill the vacancy be determined expeditiously.

10 (b) When, pursuant to the provisions of section seven,  
11 article VIII of the Constitution of West Virginia, the  
12 Governor appoints a person to fill a vacancy in the office  
13 of Justice of the Supreme Court of Appeals or in the office

14 of judge of the circuit court, no suit or action challenging  
15 the qualifications or eligibility of the person so appointed,  
16 if it be based upon any fact or circumstance in existence at  
17 the time of the appointment, will be cognizable in any  
18 court of this state unless it be brought within twenty days  
19 after the appointment by the Governor.

20 (c) When, pursuant to the provisions of section ten,  
21 article VIII of the Constitution of West Virginia and the  
22 general laws adopted thereunder, a person is appointed to  
23 fill a vacancy in the office of magistrate, no suit or action  
24 challenging the qualifications or eligibility of the person  
25 so appointed, if it be based upon any fact or circumstance  
26 in existence at the time of the appointment, will be  
27 cognizable in any court of this state unless it be brought  
28 within twenty days after the appointment.

29 (d) When, pursuant to the provisions of section sixteen,  
30 article VIII of the Constitution of West Virginia, the  
31 Governor appoints a person to fill a vacancy in the office  
32 of judge of the family court, no suit or action challenging  
33 the qualifications or eligibility of the person so appointed,  
34 if it be based upon any fact or circumstance in existence at  
35 the time of the appointment, will be cognizable in any  
36 court of this state unless it be brought within twenty days  
37 after the appointment by the Governor.

38 (e) Following a judicial appointment, if no suit or action  
39 is commenced within the time specified above, or if, in a  
40 suit having been timely brought, it is finally adjudged that  
41 the appointee is qualified and eligible to hold the office to  
42 which he or she has been appointed, then the appointee  
43 may take the oath of office and thereafter execute the  
44 office for the unexpired term to which he or she has been  
45 appointed, subject to removal under section eight, article  
46 VIII of the Constitution of West Virginia, in the case of a  
47 Justice of the Supreme Court of Appeals, the circuit court  
48 or the family court, only by impeachment, and in the case  
49 of a magistrate, in the manner provided by general law for  
50 removal of a magistrate.

51 (f) An action timely brought to challenge the qualifica-  
52 tions or eligibility of an appointee to judicial office shall  
53 be given priority over all other actions on the docket of the  
54 court in which the action is brought.

55 (g) Nothing contained in this section is intended by the  
56 Legislature to interfere with the authority of the Supreme  
57 Court of Appeals to discipline or retire judges or magis-  
58 trates as that authority is set forth in the Constitution of  
59 West Virginia and in rules adopted by the Supreme Court  
60 of Appeals pursuant to the Constitution of West Virginia.

61 (h) The Legislature declares that the offices of magis-  
62 trate, judge of the family court, judge of the circuit court  
63 and Justice of the Supreme Court of Appeals are elective  
64 in nature and are all "offices to be filled by election by the  
65 people" within the meaning of the exceptions clause of  
66 section fifteen, article VI of the Constitution of West  
67 Virginia, which clause describes the kind and character of  
68 the offices thereby removed from the operation of the  
69 prohibitory clause and not the method by which the offices  
70 are to be filled.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Charles White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2006.

*Russell E. Gibson*  
.....  
Clerk of the Senate

*Gregory W. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *3rd* .....  
Day of *April* ....., 2006.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 03 2006

Time 2:03 pm